STATE OF MICHIGAN

COURT OF APPEALS

DONALD C. AUSTIN, M.D.,

Plaintiff-Appellant,

V

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

UNPUBLISHED
August 23, 2005

No. 259481
Wayne Circuit Court
LC No. 04-414591-CZ

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting defendant summary disposition pursuant to MCR 2.116(C)(8) or (C)(10), and denying plaintiff's motion to amend his complaint. We affirm.

Plaintiff first argues that the trial court erred by granting defendant summary disposition because defendant did not conduct an adequate "investigation" to properly claim an exemption from its duty to disclose information under the Freedom of Information Act (FOIA), MCL 15.231. We disagree.

This Court reviews de novo a trial court's decision to grant or deny summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). We limit our review to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). Furthermore, we review de novo questions of statutory interpretation. *Dressel, supra.* Whether a public record is exempt from disclosure under the FOIA is a mixed question of fact and law. This Court reviews the trial court's factual findings for clear error and reviews questions of law de novo. *Messenger v Dep't of Consumer & Industry Services*, 238 Mich App 524, 530-531; 606 NW2d 38 (1999).

The FOIA declares that it is the public policy of this state that all persons, except prisoners, are entitled to complete information regarding the affairs of government and the official acts of those who represent them so that they may fully participate in the democratic process. MCL 15.231(2); *The Herald Co v Bay City*, 463 Mich 111, 118; 614 NW2d 873 (2000). Under the FOIA, a public body must disclose all public records that are not specifically exempt under the Act. MCL 15.233(1); *Scharret v City of Berkley*, 249 Mich App 405, 412; 642 NW2d 685 (2002). Public records subject to the FOIA include writings prepared, owned, used, possessed, or retained by a public body in the performance of an official function. MCL

15.232(e); *MacKenzie v Wales Twp*, 247 Mich App 124, 128; 635 NW2d 335 (2001). Upon a sufficiently descriptive request, a person has the right to inspect, copy or receive copies of nonexempt public records. MCL 15.233(1); *Thomas v New Baltimore*, 254 Mich App 196, 203; 657 NW2d 530 (2002). A denial of a request, complete or partial, must contain the reason for the denial, an explanation of the basis for the exemption from disclosure, and a description of the deleted material. MCL 15.235(4); *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 102; 649 NW2d 383 (2002). The public body has the burden to justify its denial. MCL 15.240(4); *Thomas, supra*.

Defendant honored plaintiff's FOIA requests by disclosing what it determined to be its non-exempt records to plaintiff. Furthermore, defendant gave plaintiff reasons why it was partially denying his request. Defendant's denial included a description of the deleted material and an explanation of the basis of the exemptions it was claiming. Therefore, if defendant properly claimed its exemption, we must find that defendant acted in accordance with the FOIA.

MCL 15.243 lists reasons a public body may claim partial or total exemption of records from disclosure, which are to be narrowly construed. *The Herald Co, supra* at 119.

We conclude that defendant properly redacted the name of an expert nurse from a memorandum it disclosed to plaintiff pursuant to MCL 15.243(1)(a), which permits exemption of "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." For this exemption to apply, the information must be of a personal nature and its disclosure must constitute a clearly unwarranted invasion of privacy. *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 294; 565 NW2d 650 (1997). In determining whether a disclosure would constitute a clearly unwarranted invasion of privacy, a court must balance the public interest in disclosure against the interest the Legislature intended to protect. *Mager v Dep't of State Police*, 460 Mich 134, 145; 595 NW2d 142 (1999). The only relevant public interest in disclosure to be weighed is the extent to which disclosure would serve the core purpose of the FOIA to contribute significantly to the public understanding of the operations or activities of the government. *Id*. Though a name is not very personal in nature, we find that the nurse's name was properly redacted because the public interest in disclosing the name was very low. The nurse's name was not necessary to further the public's understanding of the operations or activities of defendant concerning Dr. Zamorano (Zamorano). Therefore, defendant properly redacted the nurse's name from the memorandum it disclosed to plaintiff. *Id*.

Furthermore, defendant properly excluded its investigative interviews from the information it sent to plaintiff pursuant to MCL 15.243(1)(d), which permits exemption of "[r]ecords or information specifically described and exempted from disclosure by statute." Under the Public Health Code (PHC), a registrant or licensee must provide the department with information regarding alleged violations of § 16221, MCL 333.16221, and the information and the identity of the a registrant or licensee who provides the information is confidential. MCL 333.16222. The investigative interviews were confidential because they were made pursuant to a § 16221 investigation. MCL 333.16222. Except as otherwise provided in MCL 15.243(1)(t), information obtained in a § 16221 investigation or a compliance conference before a complaint is issued "is confidential and shall not be disclosed." MCL 333.16238. It is undisputed that a complaint was not issued, and though plaintiff argues to the contrary, defendant did conduct a proper "investigation" as contemplated by MCL 333.16221, and partially defined by *Messenger,*

supra. In *Messenger, supra*, this Court found that the defendant's actions of "obtaining documents from public agencies and monitoring the criminal proceeding," did not constitute "a detailed or careful examination of the events surrounding plaintiff's alleged misconduct," and thus, did not "rise to the level of an 'investigation' as contemplated by the [PHC]." *Messenger, supra* at 534-535. Here however, defendant did more than "obtain documents." Defendant internally reviewed Zamorano's credentials file, interviewed twelve "fellow health professionals" regarding the validity of Zamorano's credentials and skills as a physician, and interviewed "Henry Ford Hospital staff" about background checks they conducted in regard to Zamorano. We conclude that defendant's actions constituted a proper "investigation." Therefore, the investigative interviews were confidential and properly exempted pursuant to MCL 15.243(1)(d).

In sum, defendant honored plaintiff's FOIA requests by disclosing non-exempt information. Further, defendant satisfied its burden to justify the information it did not disclose was properly exempted. Therefore, the trial court did not err when it granted defendant summary disposition on plaintiff's FOIA claim.

Plaintiff next argues that the trial court abused its discretion when it denied plaintiff's motion to amend his complaint to add a specific request for mandamus relief. We disagree.

We review denials of motions for leave to amend pleadings for an abuse of discretion. *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004). A trial court should deny a motion to amend only for specific reasons such as (1) undue delay, (2) bad faith or dilatory motive on the part of the moving party, (3) repeated failure to cure deficiencies with amendments previously allowed, (4) undue prejudice to the opposing party if amendment is granted, and (5) futility. *Id*. at 189-190. "The trial court should specifically state its reason for denying a motion to amend on the record." *Id*. at 190.

To obtain a writ of mandamus, a plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, the defendant must have a clear legal duty to perform it, the act must be ministerial, and the plaintiff must be without other adequate legal or equitable remedy. *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). A ministerial duty is one regarding which the law prescribes and defines the performance with such precision and certainty as to leave nothing to the exercise of discretion or judgment. *Keaton v Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 (1993). Mandamus may issue to compel the exercise of discretion but not to compel its exercise in a particular manner. *Teasel v Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984).

Though the trial court failed to specifically state its reason for denying plaintiff's motion to amend on the record, the trial court properly denied plaintiff's motion to amend because plaintiff's motion to amend was futile. *Franchino, supra* at 189-190. Plaintiff's motion was futile because mandamus was not appropriate. It was not appropriate to compel defendant to investigate plaintiff's allegations because, as discussed *supra*, defendant already conducted a proper investigation. Furthermore, even if it were found that defendant had not conducted a proper investigation, mandamus would still not be proper because defendant did not merely have a ministerial duty to conduct an investigation. *Lickfeldt, supra*, p 302. The PHC provides that defendant "may investigate activities related to the practice of a health profession by a licensee, . . . [and] may hold hearings, administer oaths, and order relevant testimony to be taken." MCL

333.16221. Since defendant "may" conduct an investigation, the PHC allows defendant to exercise discretion, and thus, defendant does not merely have a ministerial duty to conduct an investigation. *Keaton, supra* at 683. Thus, mandamus would not have been proper, *Lickfeldt, supra* at 302, and the trial court did not abuse its discretion when it denied plaintiff's "futile" motion to amend his complaint, *Franchino, supra* at 189-190.

We affirm.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey